

In Appeal.

PHILEMON WRIGHT

et al.

APPELLANTS ;

AND

JONATHAN ALGER,

RESPONDENT.

RESPONDENT'S CASE.

C. R. OGDEN, Attorney.

In Appeal.

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JULY, 1820.

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APPELLANTS;

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RESPONDENT'S CASE.

THIS was an Action instituted in the Court of King's Bench, for the District of Montreal, by the Respondent, against the Appellants, for a Breach of Covenant entered into by the Appellants and Respondent on the 13th day of February, 1818, by which the said contracting parties stipulated and agreed upon as follows, *to-wit*: "That they the Appellants should and would, on or before the 15th day of August, 1818, grant unto the said Alger, the Respondent, a good and sufficient Lease of a certain building or tenement called 'the Trip Hammer Shop,' with all the tools, apparatus, and appurtenances thereunto belonging; situated, standing, and being on the Grand Chaudière Falls, in the Township of Hull, to hold the same from the said day until the full end and term of one year next ensuing, to have and to hold the same for and during the aforesaid term of time, free of rent or charge whatever, with the appurtenances, at the expiration of which period the said Alger (the Respondent) was to restore said building unto the Appellants, with a' the tools, implements, and apparatus thereto belonging, in the same condition in which he received them, making a proper and suitable allowance for the natural decay, wear and tare of the said articles; and it was also agreed that the said Respondent was to have the use and benefit of the Apprentices during the said time, he providing them with board; and the said Appellants further bound themselves to provide and furnish the said Respondent with any quantity of iron and steel he might require to manufacture, during the aforesaid term of time; and for such advances as they the Appellants should make to the said Respondent, they the Appellants bound themselves and agreed to receive from the Respondent scythes, axes, hoes, and all other useful implements and workmanship to liquidate the same, at the same price for which he could vend at the River St. Lawrence, or elsewhere; and should the said Respondent have occasion to forward any tools or implements of his manufacture down the River, the Appellants further engaged to convey them in their boats, free from any expence or charge, as far as Lachine; and should the said Respondent require to transport any iron or steel from Montreal to Hull they the said Appellants, by the same instrument, engaged to transport the same for the price of Thirty Dollars per Ton weight. The iron and steel the said Appellants undertook to give the said Respondent at the first cost in Montreal, with the addition of transportation, and to deliver to the Respondent coal at the same price which they the Appellants were obliged to pay; and further, that the said Respondent should enjoy the use of the gardens."

The Respondent after reciting the foregoing agreement and covenant in his declaration, alleges that he was at all times ready and willing to accept and fulfill the same, and offered so to do, but that the Appellants refused to execute on their part that which they were bound to do, and wholly made default, to the damage of the said Respondent £500, current money of the Province.

In support of the Respondent's Action, he filed certain exhibits, to wit:

- 1st—The original agreement, dated 15th February, 1818.
- 2nd—Protest by Respondent against Appellants, 24th September, 1818.
- 3rd—A letter from Respondent to Appellants.
- 4th—An agreement and discharge of the 13th February, 1818.
- 5th—A plan of the Trip Hammer.

To this action the Appellants pleaded first that all the allegations were false, and secondly *non infrigit conventionem*.

On which issue was joined and the parties proceeded to evidence; on the 11th of October, 1819, the parties by their Counsel were heard, and on the 20th of April the Court below, by its judgment condemned the Appellants jointly and severally to pay to the Respondent a sum of £200, currency, for his damages, together with the costs of suit.

And it is from this judgment that an Appeal has been instituted.

